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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Christian UPHOFF

Group Art Unit: 1797

Application No.: 10/563,372

Examiner: N. BOWERS

Filed: March 1, 2006

Docket No.: 126501

For: BIOREACTOR

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the April 21, 2009 Restriction Requirement, Applicant provisionally elects Group I, claims 1-18, with traverse.

Applicant respectfully submits that there exists *a priori* unity of invention with respect to claims 1-24, by virtue of the fact that claims 2-24 variously depend from claim 1. As stated in Chapter 10.06 of the ISPE (*International Search and Preliminary Examination Guidelines*):

Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By "dependent" claim is meant a claim which contains all the features of one or more other claims and contains a reference, preferably at the beginning, to the other claim or claims and then states the additional features claimed (Rule 6.4).

Therefore, each dependent claim shares at least each element or technical feature of independent claim 1. ISPE 10.07 further provides:

If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises

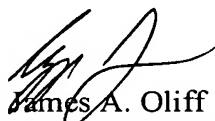
in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.

Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of independent claim 1 is known in the prior art, although the Office Action cites Lupton (WO Publication No. 92/06043) and Basfeld (DE Publication No. 19705896) as allegedly disclosing "the use of a filler body within a bioreactor including at least one recess" (*see* page 2 of the Office Action). Therefore, Applicant respectfully submits that lack of unity of invention has not been established, and thus a restriction requirement at this time is improper.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,



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Date: May 20, 2009

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